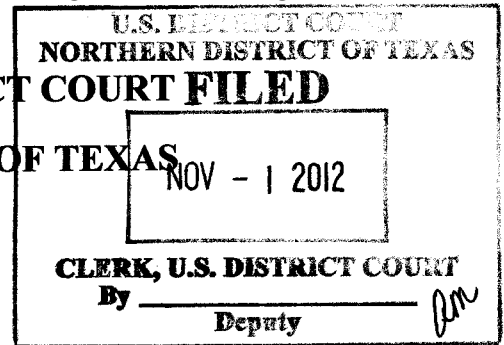


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



WAYNE H. NORMAN  
PLAINTIFF,

CIVIL ACTION: 3:12-CV-492-L

**JURY DEMAND**

TRS RECOVERY SERVICES, INC.,  
DEFENDANT.

**Brief in Support of Motion for Partial Summary Judgment**

The Plaintiff, Wayne H. Norman, files this Brief in Support of Motion for Partial Summary Judgment and would show as follows:

1. **Background and Procedural History** – Plaintiff's most recent pleading is his Amended Complaint [Docket No. 26]. In the Amended Complaint, Plaintiff alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 *et seq.*, the Texas Debt Collection Practices Act, section 392.001 *et seq.* Tex. Fin. Code, and the Deceptive Trade Practices – Consumer Protection Act, section 17.41 *et seq.* Tex. Bus. & Comm. Code.
2. The factual basis for the Plaintiff's claims is that the Defendant repeatedly violated these provisions.

3. The purpose of summary judgment is to avoid an unnecessary trial by enabling an expeditious procedure whereby, for issues on which there is no material factual dispute, the court can decide the controversy by applying the law to the undisputed facts. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

4. Plaintiff contends that there is no material factual dispute to the matters outlined in said motion.

5. The FDCPA “prohibits ‘debt collector[s]’ from making false or misleading representations and from engaging in various abusive and unfair practices.” *Heintz v. Jenkins*, 514 US 291, 294 (1995).

6. The FDCPA is, for the most part, a strict liability statute in which a single violation is sufficient to establish liability, without regard to the violator’s intent. *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *Frey v. Gangwish*, 970 F.2d 1516, 1521 (6th Cir. 1992); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2d Cir. 1993); *Clark*, 460 F.3d at 1177 (9th Cir. 2006).

7. As a remedial statute, the FDCPA is liberally construed in favor of the consumer. *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 453 (3d Cir. 2006); *Johnson v. Riddle*, 305 F.3d 1107, 1117 (10th Cir. 2002). Violations of the FDCPA are analyzed from the viewpoint of the “unsophisticated consumer.” *Duffy v. Landberg*, 215 F.3d 871, 873 (8th Cir. 2000).

8. The courts apply an objective standard of deception, the "least sophisticated" or unsophisticated" consumer standard, so that proof of actual deception is neither required nor relevant to the determination of a collector's liability. *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1225-28 (9th Cir. 1988); *Jeter v. Credit Bur., Inc.*, 760 F.2d 1168, 1172-75 (11th Cir. 1985); *Baker v. G.C. Services Corp.*, 677 F.2d 775, 778 (9th Cir. 1982); *Johnson v. Eaton*, 873 F.Supp. 1019 (M.D. La. 1995); *Dutton v. Wolhar*, 809 F.Supp. 1130 (D.Del. 1992); *Beattie v. D.M. Collections, Inc.*, 745 F.Supp. 383, 392 (D.Del. 1991); *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480, 1486-87 (M.D.Ala. 1987); *United States v. Central Adjustment Bureau, Inc.*, 667 F.Supp. 370, 375 (N.D. Tex. 1986), *aff'd* on other grounds, 823 F.2d 880 (5th Cir. 1987).

9. As alleged in the Amended Complaint, the Defendant sent Plaintiff collection letters dated July 12, 2011, July 19th, 2011, and August 18th, 2011. These collection letters are deceptive and misleading as they failed to disclose the affirmative notice disclosures required by section 1692e(11) of the Act. This warning is mandatory. *See Hulshizer v. Global Credit Services, Inc.*, 728 F.2d 1037 (8th Cir. 1984). In *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22 (2d Cir. 1989), the court confirmed that the warning must be given in **all communications**. (See Exhibits "A" – "C")

10. As alleged in the Amended Complaint, Plaintiff sent the Defendant a CEASE and DESIST letter dated 6/28/2011. (See Exhibit "D")

11. The Act requires that debt collection efforts must cease after being notified in writing to cease and desist. See *Jeff Bishop v. I.C. System, Inc.*, \_\_\_\_ F.Supp.2d \_\_\_\_ (M.D. Fla. 2010); also *SALAZAR v. MFP, INC.* 847 F.Supp.2d 1329 (2012) USDC, M.D. Florida, Tampa Division.(March 9, 2012).

The ("FDCPA"), 15 U.S.C. section 1692c (c) provides:

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except-

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

12. Plaintiff provided a written Cease and Desist letter to the Defendant; however, the Defendant continued collection efforts by sending Plaintiff collection letters dated September 17, 2011, October 21<sup>st</sup>, 2011, and December 21<sup>st</sup>, 2011, thus violating the protective provisions of this section. (See Exhibits "E" - "G").

13. The Plaintiff has now shown that it is entitled to summary judgment on all issues argued in this motion before the Court. Plaintiff should be awarded the statutory liability under the FDCPA in the amount of \$1,000 dollars.

WHEREFORE, the Plaintiff respectfully requests that the Court grant a summary judgment as requested and such other and further relief, both at law and in equity, to which the Plaintiff may be justly and legally entitled.

Respectfully submitted,

  
/s/ Wayne H. Norman

Wayne H. Norman

509 Elgin Apt. 1

Forest Park, Il 60130

(682) 241-8688

whnorman@hotmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3<sup>rd</sup>, 2012, I electronically filed the foregoing with the clerk for the U.S. District Court, Northern District of Texas, using the CM/ECF system which will send notification to case participants registered for electronic notice.

**ANDERSON TOBIN, PLLC**

Kendal B. Reed

One Galleria Tower

1355 Noel Road, Suite 1900

Dallas, Texas 75240

**ATTORNEYS FOR DEFENDANT**

**TRS RECOVERY SERVICES, INC.**

/s/ Wayne H. Norman

A handwritten signature in black ink, appearing to be 'Wayne H. Norman', written over a horizontal line.



# EXHIBIT “A”



TeleCheck Services, Inc.  
Checkwriter Services  
5251 Westheimer (77056-5404)  
P. O. Box 4513  
Houston, TX 77210-4514



**TELECHECK  
SERVICES, INC.**  
An affiliate of TRS  
Recovery Services, Inc.

A First Data Company

July 12, 2011

37300

Wayne Norman

2803 Riverside Parkway Apt. 806

Grand Prairie, TX 75050



**TRS RECOVERY  
SERVICES, INC.**  
An affiliate of TeleCheck  
Services, Inc.

Dear: Wayne Norman

Thank you for your inquiry.

TeleCheck is in receipt of the request for a copy of the Electronic Check Acceptance (ECA) signed receipt regarding reference number 37110753725550. Please note, TeleCheck has submitted a request for the ECA signed receipt and it will be mailed promptly.

If you have any questions please call 1-888-612-7431 Monday-Friday 8:00 a.m. to 4:30 p.m. CST. Please refer to Tracking Number 111870296M in any future correspondence with TeleCheck.

Sincerely,

**TeleCheck Checkwriter Services**

ZUZ





# EXHIBIT “B”



TeleCheck Services, Inc.  
Checkwriter Services  
5351 Westheimer (77056-5404)  
P. O. Box 4513  
Houston, TX 77210-4514



TELECHECK  
SERVICES, INC.  
An affiliate of TRS  
Recovery Services, Inc.



TRS RECOVERY  
SERVICES, INC.  
An affiliate of TeleCheck  
Services, Inc.

A First Data Company

July 19, 2011

37300

Wayne Norman

2803 Riverside Pkwy #806

Grand Prairie, TX 75050

Dear: Wayne Norman

Thank you for your inquiry.

As per your request, please find enclosed copies of the Electronic Check Acceptance (ECA) signed receipt and check copy regarding reference numbers 37110753725550 & 11547351.

If you have any questions please call (800) 280-7196 Monday-Friday 8:00 a.m. to 4:30 p.m. CST. Please refer to tracking number 111870296M in any future correspondence with TeleCheck.

Sincerely,

**TeleCheck Checkwriter Services**

zuz

TRS 00006



# EXHIBIT “C”



**Resolutions Department**  
A Shared Services Department of Affiliates:



TELECHECK  
SERVICES, INC.



recovery services  
TRS RECOVERY  
SERVICES, INC.

August 18, 2011  
Wayne Norman  
2803 Riverside Parkway Apt. 806  
Grand Prairie, TX 75050

Dear: Wayne Norman

Thank you for your recent inquiry.

The report listed below reflects all negative information currently listed in your file. If you have been declined by TeleCheck, the information contained in this report is, in most cases, the cause of that decline. In order to; obtain more information about the items listed in your report, obtain a check copy, submit a dispute, or forward a payment, please contact the telephone number listed for each item.

T	Ck #	Date	Amt.	Fee(s)	Amt. Due	Reported By	Reference #	Phone #
I	134	03/10/11	37.80	32.48	70.28	Wal-Mart	37110753725550	713 567-0499
I	198	03/12/11	223.04	30.00	253.04	Safeway	11547351	713 567-0499

T - Debt Types

I - Returned Check/Electronic Check Debit

Collecting Agent

TRS Recovery Services, Inc.

Address

PO Box 17450, Denver CO 80217

*\*Please find enclosed the check image and ECA signed receipt validating the debts listed above.*

Thank you in advance for your cooperation.

Sincerely,

**TeleCheck Checkwriter Services**

zuz  
(112270130M)



# EXHIBIT “D”



111870296

JUL 05 2011

6/28/2011

TRS  
Recovery Services, Inc.  
5251 Westheimer  
Houston, TX. 77056

**RE: VALIDATION OF DEBT REQUEST**

Reference #: 37110753725550

To Whom it may concern:

I am sending this letter to you in response to a debt I received from your company. Be advised, this is not a refusal to pay, but a notice sent pursuant to the Fair Debt Collection Practices Act, 15 USC 1692g Sec. 809 (b) that your claim is disputed and validation is requested. This is NOT a request for verification or proof of my mailing address, but a request for **VALIDATION** made pursuant to the above named Title and Section. I respectfully request that your office provide me with competent evidence that I have any legal obligation to pay you.  
Please provide me with the following:

What the money you say I owe is for;

Explain and show me how you calculated what you say I owe;

Provide me with copies of any papers that show I agreed to pay what you say I owe;

Provide a verification or copy of any judgment if applicable;

Identify the original creditor;

Prove the Statute of Limitations has not expired on this account;

Show me that you are licensed to collect in my state; and

Provide me with your license numbers and Registered Agent

If your offices are able to provide the proper documentation as requested, I will require at least 30 days to investigate this information and during such time all collection activity must cease and desist.

Also during this validation period, if any action is taken which could be considered detrimental to any of my credit reports, I will consult with my legal counsel.

TRS 00020

This includes any information to a credit reporting repository that could be inaccurate or invalidated or verifying an account as accurate when in fact there is no provided proof that it is.

If your offices fail to respond to this validation request within 30 days from the date of your receipt, all references to this account must be deleted and completely removed from my credit file and a copy of such deletion request shall be sent to me immediately.

I would also like to request, in writing, that no telephone contact be made by your offices to my home or to my place of employment. If your offices attempt telephone communication with me, including but not limited to computer generated calls or correspondence sent to any third parties, it will be considered harassment and I will have no choice but to file suit. All future communications with me **MUST** be done in writing and sent to the address noted in this letter.

This is an attempt to correct your records, any information obtained shall be used for that purpose

Respectfully,



Wayne Norman  
2803 Riverside Parkway Apt. 806  
Grand Prairie, Tx. 75050

TRS 00021



# **EXHIBIT “E”**







**TELECHECK PRIVACY STATEMENT.** Protecting consumer privacy is important to TeleCheck Services, Inc. The following provides you with information about TeleCheck Services, Inc.'s collection and use of nonpublic personal information about consumers.

*TeleCheck Services, Inc. collects nonpublic personal information about you from the following sources: (1) information we, or our customers, receive from you on applications or other forms; (2) information about your transactions with us, our customers, our affiliates, or others; (3) information we receive from government records; and (4) information we receive from consumer reporting agencies and financial institutions. The types of information we collect include: (1) application information; (2) identification information; (3) transaction information; and (4) consumer reports. Information gathered from these sources may include data about your credit worthiness, credit history, credit standing, credit capacity, credit scores, character, general reputation, personal characteristics, mode of living and transaction history.*

*We may disclose the following kinds of nonpublic information about you: (1) information we receive from you on applications or other forms, such as your name, address, social security number, assets and income; (2) information about your transactions with us, our customers, our affiliates, or others, such as your account balance, payment history, nonpayment history, collection history, parties to these transactions and check, debit, credit and other card usage; and (3) information we receive from a consumer reporting agency, financial institution or others concerning your credit worthiness, credit standing, credit capacity, credit history, and credit scores.*

*TeleCheck Services, Inc. does not disclose any nonpublic personal information about you or former customers to anyone, except as permitted by law. TeleCheck may disclose nonpublic personal information about you to the following types of third parties: (1) financial service providers (such as banks, credit card companies and brokerage houses); (2) non-financial companies, such as retailers, direct marketers, catalogue companies, airlines and government agencies; and (3) credit reporting agencies. Disclosures by TeleCheck of nonpublic personal information are made in connection with transactions initiated by you, as a consumer, in order to authorize, settle, bill, process, clear, transfer, reconcile or collect amounts charged, debited or otherwise paid.*

*We may disclose the information we collect, as described above, to companies that process transactions for us. We may also disclose nonpublic personal information about you to other nonaffiliated third parties, as permitted by law.*

*We restrict access to nonpublic personal information about you to those employees who need to know that information to perform their job duties. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.*

Please send GENERAL CORRESPONDENCE to the following address:

**TRS RECOVERY SERVICES, INC.  
PO BOX 4812  
HOUSTON TX, 77210-4812**

**TRS 00015**



# EXHIBIT “F”



**TRS  
RECOVERY  
SERVICES, INC.**

**SETTLEMENT OFFER**

Corporate Offices:  
5251 Westheimer  
Houston, TX 77056  
Telephone:  
713-567-0499

Customer:	Wal-mart No. 5416	Date Written	March 10, 2011
Check Amount:	\$37.80	Check Number	134
Returned Check Fee:	\$30.00	Returned:	Non-sufficient funds
Texas State Tax:	\$2.48	Reference #:	37110753725550
Outstanding Balance:	\$70.28		

October 21, 2011

**SETTLEMENT WITH 25% SAVINGS: \$52.71**

**Avoid Further Collection Activity** - TRS Recovery Services, Inc. has made numerous attempts to contact you to collect the Total Amount Due on the above-referenced check. Our records indicate that the Total Amount Due is still outstanding.

**Settle now, save 25%** - Our affiliate, TeleCheck is willing to offer you an opportunity to settle your account in full upon payment of \$52.71. If TRS receives your payment of \$52.71 within fifteen (15) days from the date of this letter, TeleCheck will consider this matter to be settled and will remove any negative information regarding the above-referenced check contained in its National Computer Files.

**For faster service in updating your file:**

You may pay on line by Visa or MasterCard at [www.firstdata.com/trs](http://www.firstdata.com/trs). With your permission, and with funds available in your account, we are able to draft your account for the amount due. Simply call us at (713)567-0499 and request your payment be processed by draft. These services are optional and available at additional cost.

The total amount due may not include additional checks owed to TeleCheck.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.  
This is a communication from a debt collector.

See reverse side for important information and the enclosed TeleCheck Privacy Statement.

TRS Recovery Department  
P.O. Box 4857  
Houston, TX 77210-4857

RECCBSET75

Detach and return bottom portion with payment

Processing Center  
P.O. Box 17380  
Denver, CO 80217-0380  
RETURN SERVICE REQUESTED

Amount Paid: \$52.71

371107537255501000037808808000032482

37110753725550-RECCBSET75-October 21, 2011

TRS 00016



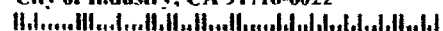
NORMAN WAYNE  
2803 RIVERSIDE PKWY APT 806  
GRAND PRAIRIE, TX 75050-8738

006756-44



TRS Recovery Services, Inc.  
PO BOX 60022

City of Industry, CA 91716-0022



Note: send **PAYMENTS ONLY** to P.O. Box above. Send **GENERAL CORRESPONDENCE** to the address on the back of this letter. Please Do Not Send Cash

ABC151L(20051101)

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

**TELECHECK PRIVACY STATEMENT:** Protecting consumer privacy is important to TeleCheck Services, Inc. The following provides you with information about TeleCheck Services, Inc.'s collection and use of nonpublic personal information about consumers.

*TeleCheck Services, Inc. collects nonpublic personal information about you from the following sources: (1) information we, or our customers, receive from you on applications or other forms; (2) information about your transactions with us, our customers, our affiliates, or others; (3) information we receive from government records; and (4) information we receive from consumer reporting agencies and financial institutions. The types of information we collect include: (1) application information, (2) identification information, (3) transaction information; and (4) consumer reports. Information gathered from these sources may include data about your credit worthiness, credit history, credit standing, credit capacity, credit scores, character, general reputation, personal characteristics, mode of living and transaction history.*

*We may disclose the following kinds of nonpublic information about you: (1) information we receive from you on applications or other forms, such as your name, address, social security number, assets and income; (2) information about your transactions with us, our customers, our affiliates, or others, such as your account balance, payment history, nonpayment history, collection history, parties to these transactions and check, debit, credit and other card usage; and (3) information we receive from a consumer reporting agency, financial institution or others concerning your credit worthiness, credit standing, credit capacity, credit history, and credit scores.*

*TeleCheck Services, Inc. does not disclose any nonpublic personal information about you or former customers to anyone, except as permitted by law. TeleCheck may disclose nonpublic personal information about you to the following types of third parties: (1) financial service providers (such as banks, credit card companies and brokerage houses); (2) non-financial companies, such as retailers, direct marketers, catalogue companies, airlines and government agencies; and (3) credit reporting agencies. Disclosures by TeleCheck of nonpublic personal information are made in connection with transactions initiated by you, as a consumer, in order to authorize, settle, bill, process, clear, transfer, reconcile or collect amounts charged, debited or otherwise paid.*

*We may disclose the information we collect, as described above, to companies that process transactions for us. We may also disclose nonpublic personal information about you to other nonaffiliated third parties, as permitted by law.*

*We restrict access to nonpublic personal information about you to those employees who need to know that information to perform their job duties. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.*

Please send GENERAL CORRESPONDENCE to the following address:

TRS RECOVERY SERVICES, INC.  
PO BOX 4812  
HOUSTON TX, 77210-4812

TRS 00017



# EXHIBIT “G”



**TRS  
RECOVERY  
SERVICES, INC.**

**Corporate Offices:**  
5251 Westheimer  
Houston, TX 77056  
Telephone:  
713-567-0499

<b>Customer:</b>	Wal-mart No. 5416	<b>Date Written</b>	March 10, 2011
<b>Amount:</b>	\$37.80	<b>Check Number</b>	134
<b>Returned Check Fee:</b>	\$30.00	<b>Returned:</b>	Non-sufficient funds
<b>Texas State Tax:</b>	\$2.48	<b>Reference #:</b>	37110753725550
<b>Total Amount Due:</b>	\$70.28		

December 21, 2011

**THIS IS A DEMAND FOR THE BALANCE IN FULL**

Unless we receive the Total Amount Due promptly, we will assign this file to our Check Investigations Department. A Check Investigator will then attempt to contact you by telephone and make recommendations for further collection action.

**WE FULLY INTEND TO RECOVER THE TOTAL AMOUNT DUE IN FULL**

**For faster service in updating your file:**

You may pay on line by Visa or MasterCard at [www.firstdata.com/trs](http://www.firstdata.com/trs). With your permission, and with funds available in your account, we are able to draft your account for the amount due. Simply call us at (713)567-0499 and request your payment be processed by draft. These services are optional and available at additional cost.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.  
This is a communication from a debt collector.

**See reverse side for important information and the enclosed TeleCheck Privacy Statement.**

**P.O. Box 4857  
Houston, TX 77210-4857**

**RECS3**

**Detach and return bottom portion with payment**

Processing Center  
P.O. Box 17380  
Denver, CO 80217-0380  
RETURN SERVICE REQUESTED

**Amount Paid: \$70.28**

371107537255501000037808808000032482

37110753725550-RECS3-December 21, 2011

**TRS 00018**



NORMAN WAYNE  
3800 BRADEN LN  
ARLINGTON, TX 76016-3318

CGCG24-2



TRS Recovery Services, Inc.  
PO BOX 60022  
City of Industry, CA 91716-0022

**Note: send PAYMENTS ONLY to P.O. Box above. Send GENERAL CORRESPONDENCE to the address on the back of this letter. Please Do Not Send Cash**

ABC151L(20051101)

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

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*We may disclose the following kinds of nonpublic information about you: (1) information we receive from you on applications or other forms, such as your name, address, social security number, assets and income; (2) information about your transactions with us, our customers, our affiliates, or others, such as your account balance, payment history, nonpayment history, collection history, parties to these transactions and check, debit, credit and other card usage; and (3) information we receive from a consumer reporting agency, financial institution or others concerning your credit worthiness, credit standing, credit capacity, credit history, and credit scores.*

*TeleCheck Services, Inc. does not disclose any nonpublic personal information about you or former customers to anyone, except as permitted by law. TeleCheck may disclose nonpublic personal information about you to the following types of third parties: (1) financial service providers (such as banks, credit card companies and brokerage houses); (2) non-financial companies, such as retailers, direct marketers, catalogue companies, airlines and government agencies; and (3) credit reporting agencies. Disclosures by TeleCheck of nonpublic personal information are made in connection with transactions initiated by you, as a consumer, in order to authorize, settle, bill, process, clear, transfer, reconcile or collect amounts charged, debited or otherwise paid.*

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*We restrict access to nonpublic personal information about you to those employees who need to know that information to perform their job duties. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.*

Please send GENERAL CORRESPONDENCE to the following address:

**TRS RECOVERY SERVICES, INC.  
PO BOX 4812  
HOUSTON TX, 77210-4812**

**TRS 00019**